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MCDERMOTT WILL & EMERY 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/18/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/030,249

Applicant(s)

TABATA ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Oath/Declaration*

1. The signature of Inventor 202 was altered but the alteration was not initialed nor dated. It is assumed that the remainder of the inventors were aware of such changes at the time of signature.

### *Specification*

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### For Example:

### *Drawings*

3. The proposed drawing changes were received on 1-9-02. These drawing changes are approved by the Examiner.

4. The drawings are objected to because the Figures are replete with informalities. For example, a line from each numeral to the structure it denotes should be set forth, i.e. no numerals in parenthesis. Also no text in any language should be set forth, i.e. such text should be included in the written description instead. Each Figure should be separately designated, e.g. No Figs. 2. Cross-sectional lines should be designated by Roman or Arabic numerals. The descriptions of the Figures on pages 14-16 and the Figures should be consistent. In Figure 1, the numeral 3B does not denote the back tissue. Also the lines from 3 and 6 and the solid portion of 3 should be

Art Unit: 3761

dashed to denote underlying structure. In Figure 3, where are 10A and 20A? In Figure 4, where is G? In Figures 5-11, where is 8 and E1n? In Figure 5, the lines from 7A and 7B should be dashed. Also Z should be underlined. It should be noted that these examples are merely illustrative. The Figures should be carefully reviewed and revised, as necessary, to overcome all the informalities therein. Applicants are thanked in advance for their cooperation in placing the drawings in proper form. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Description***

6. The disclosure is objected to because of the following informalities: The description is replete with informalities. For example: 1) The reference to the inventors, e.g. page 1, lines 20-25 should be avoided, i.e. the text should set forth a factual description of the invention. 2) The description of the Figures and the Figures should be consistent, e.g. on page 20, lines 14-22, i.e. Figures 1-3 show a member 5 positioned like member 5C in Figure 4. Compare page 22, lines 20-21 to Figures 5-11. Compare page 24, lines 5-8 to page 25, lines 3-5. 3) In Figure 1, what is

Art Unit: 3761

5A? In the second figure of Figure 2, what are the phantom lines showing? 4) On page 21, line 22, "2" should be --2A--. On page 23, line 13, "6" should be --8--. The specification should be carefully reviewed and revised, as necessary, to overcome the informalities therein. Applicants are thanked in advance for their cooperation in placing the description in proper form.

Appropriate correction is required.

### *Claim Objections*

7. Claims 1-21 are objected to because of the following informalities: the claims are replete with informalities. For example: in claim 1, lines 3-4 should be --and stretching members;--. Lines 5-8 should be --said free portion has a base line which is positioned in a side flap which is laterally outboard with respect to a side edge of said absorbent core and a standing portion which extends from the base line toward a longitudinal centerline of said article, the free portion additionally folding laterally outward away from the longitudinal centerline at a midpoint to define a contacting portion;--. Lines 11-13 should be --wherein the standing cuff extends toward a wearer's leg due to a stretching force of the stretching members in a use condition while the side flap between the side edge of the absorbent core and the base line is deformed.--. In claim 3, line 2, "the" should be --a--, line 3, "an article body" should be --the article-- and on line 4, "folds...be" should be --is--. In claim 4, lines 2 and 3, after "spaced", --from-- should be inserted and on lines 2 and 4, "standing" should be --lateral--. In regard to claim 2, see discussion of claim 1. Also, lines 5-10 should be --said absorbent structure being disposed between a liquid pervious sheet on a wearer's side of the article and a liquid impervious sheet on an opposite back side of said article, and a back sheet being disposed on a back side of said

Art Unit: 3761

liquid impervious sheet, said liquid impervious sheet extending laterally outwardly beyond a side edge of the absorbent core and the free portion of the standing cuff extending from the laterally outwardly extending portion of the impervious sheet--. With respect to claim 5 see discussion of claims 1-4 supra. Also lines 11 et seq should be --said stretching members on said contacting portion have a diameter and a contractility, and said stretching members on said standing portion have a diameter which is larger than the diameter of the members of the contacting portion and a contractility which is smaller than that of the members of the contacting portion.--. In claims 3-4, 8-10, 12-13, 15-20, line 1, "A" should be --The--. It should be noted that these examples are illustrative of the informalities in claims 1-21. The claims should be carefully reviewed and revised, as necessary. Applicants are thanked in advance for their cooperation in placing the claims in proper form. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. Claims 1-5 and 7-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 2, is Applicant claiming members in three locations, i.e. in each portion and in the fold, two portions, i.e. in the contacting portion adjacent the fold and in the standing portion, or in four locations, i.e. in each portion and in the vicinity of the fold in each portion? For purposes of examination on the merits, two locations, i.e. each portion, will be considered. In regard to claim 5, a positive structural antecedent basis for "said stretching...standing portion"(lines 8-9) should be defined. In regard to claims 7-10, how many members is Applicant

Art Unit: 3761

claiming at a minimum along the edge and on the base line-side, i.e. one, see claims 8-9, or more than one, see claim 10? This also applies to claims 14-20. In regard to claim 11, a positive antecedent basis for "said...members"(second to last line) should be set forth. For purposes of examination on the merits of claims 7-20, the portions will be considered to each have a minimum of one member. In regard to claims 17-18 and 20, a positive antecedent basis for "said base line-side members" should be set forth. In regard to claim 18, are the width and length on lines 3 and 5 and the width and length of the article one and the same?

### ***Claim Language Interpretation***

9. None of the claims invoke 35 USC 112, sixth paragraph, since proper means plus function format is not used in combination with the term "means". Also, none of the claim terminology has been specifically defined in the specification. Therefore, such terminology is given its common meaning, i.e. dictionary definition.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3761

11. Claims 1-4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al, '121.

Claim 1: See Figures, especially 3, 4, 7 and 9, col. 9, lines 13-22, col. 10, lines 6-15, col. 12, line 63-col. 13, line 43 and col. 13, line 57-col. 14, line 4, claim 16, i.e. the absorbent article is 20 having an absorbent structure comprising an absorbent core 44, at least one standing cuff 102 which has a free portion, 106, 108, 110, a base line, adjacent 106 (It should be noted that the base line is not required to be discrete from the side flap), a standing portion from adjacent 106 and a first C-fold to adjacent the second C-fold, and a contacting portion from the second C-fold to the distal edge 66 and stretching members, at least one member 77 and at least one member 84, see discussion in paragraph 8 supra but also note the terminology "vicinity" is considered relative. With regard to the deformation of the side flap, see last two lines of claims 1-2, the diaper, i.e. side flap, is at least longitudinally curved or deformed during use due to the contraction of the elastic members and the ends of the cuffs being attached to the remainder of the diaper.

Claim 2: see discussion of claim 1. Additionally see liquid pervious topsheet 38, liquid impervious sheet 42 which can be a composite of a non-woven material coated by a film, the liquid impervious sheet and back sheet as claimed, and the free portion stands or is an extension of the liquid impervious sheet at the base line adjacent 106.

Claim 3: see col. 13, line 57-col. 14, line 4 and Figures 1 and 3.

Claim 4: see Figures and col. 10, lines 12-15 and 35-37.



Claim 6: see Figures, e.g. if the embodiment of Figure 1, were double folded such as described in Figure 3 and claim 16, at least the middle portion of the second fold extends outward of the side edge of the absorbent core in the crotch region thereof.

12. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Bruemmer et al '606.

Claim 5: See Figures, especially 10-11, and 12-13, col. 9, lines 12-39, i.e. the absorbent article is 10 having an absorbent structure 16, at least one standing cuff 34 which has a free portion, between the adhered portion of 36 and 38, a base line, the adhered portion of 36, a standing portion from adjacent the adhered portion of 36 to fold 48, and a contacting portion from the fold 48 to the distal edge 38 and stretching members, 52 and 40, see 52, 48 and 40 in Figure 12. The members 40 are smaller in diameter than the members 52, see col. 9, lines 37-39, and the contractility, i.e. the constrictive force, of the members 40 are different than the members 52, i.e. "different" encompasses larger and smaller, i.e. just not the same.

13. Claims 7-9 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by St. Louis et al '433.

Claim 7: see Figures, and discussion in paragraph 8, i.e. the absorbent structure is 28, 30, 32, the standing cuff is section 142, see, e.g., Figures 4 and 5, the stretching members are 138, see col. 9, line 66-col. 10, line 10, the standing sheet is 176, and the water proof sheet is 174.

Claim 8: see col. 18, lines 26-28. With regard to the effective stretching length, see col. 10, lines 38-39, i.e. the stretching length is an "other size" of the strand. Also see Figure 1, top and lower right hand side of 142, i.e. two outermost or distal edge strands 138 not overlaid by

Art Unit: 3761

pocket 80 while two innermost or base line-side strands overlaid by pocket and col. 26, lines 13-37 and col. 27, lines 11-55, i.e. the outermost strands are not constrained by pocket.

Claim 9: see col. 10, lines 26-50, i.e. stretching stress of strands which have different diameter, elongation, or elastic force would also be different.

Claim 21: see discussion of claim 7.

14. Claims 14-17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Laux et al, PCT '534.

Claim 14: see Figures, especially Figures 2 and 3, and discussion in paragraph 8 supra, i.e. the absorbent structure is 10, the cuff is 82 and 84 or just 84, the stretching members are 110 and 118 or just 110, see page 17, lines 21-23, the core is 32, the liquid pervious sheet is 28, the liquid impervious sheet is 30, the waist flap is adjacent 126, the proximal edge of the flap is 82 or adjacent 102, the free portion is 84, the distal edge is 104 and see page 24, lines 6-10 and Figures 2-3, i.e. the stretching members extend along the distal edge and the proximal edge side.

Claim 15: see Figures, i.e. no elastics between 28 and 30 in the waist.

Claim 16: see, e.g. page 19, lines 11-17 and Figure 2.

Claim 17: as best understood, see discussion in paragraph 8 supra, and page 20, lines 17-23. Also note page 23, lines 14-17.

Claim 19: see, e.g., Figure 2, page 18, lines 16-19 and page 23, lines 33-34. The outer edge of an end portion of a fixed portion is considered the edge between 82 and 84. It is noted that the outer edge is not required to be discrete.

Claim 20: see Figures 2-3, elements 106, 108, 110, 114, 116 and 118.

***Claim Rejections - 35 USC § 102/103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 10 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over St. Louis et al '433.

See discussion of claims 7-9 and 21, the discussion in paragraph 8 supra, col. 18, lines 9-28(1 N = about 150 g/f), col. 10, lines 26-50, col. 14, lines 12-16, col. 26, lines 6-8. It is the Examiner's first position that the stretching stress as claimed is taught by St. Louis et al. It is noted however that it is not claimed or disclosed what the size of "a portion" as claimed is, i.e. could be 15 mm by 100 mm or not. In any case the prior art teaches the general conditions claimed, i.e. stretching stress of base line-side portion larger than that of the distal edge portion. It is noted that the disclosure at page 8, lines 6-11 and page 27, lines 12-18 do not disclose the criticality of the specific stretching stresses. Since the general conditions of the claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Allen*, 105 USPQ 233.

***Claim Rejections - 35 USC § 103***

17. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Louis et al '433 in view of Minetola et al '431.

Art Unit: 3761

See discussion of claim 7 supra. Also see col. 28, lines 33-36 and col. 32, line 33-col. 33, line 40. As best understood, the absorbent structure opposite side stretching members are 66-68a which are superimposed on the absorbent core, see Figures. Applicant claims crepe paper having a shape of a rectangle and which covers the core. St Lois describes a wrapping sheet to improve integrity which can be rectangular and covers the core, which sheet is of tissue but not disclosed as creped tissue. (It is noted that the instant specification in the sentence bridging pages 11-12 does not disclose the criticality of the tissue being creped). Also see Minetola et al at col. 5, lines 37-41 which disclose that wrapping tissue are conventionally made of tissue which is creped. Therefore to make the tissue of St Louis creped as taught by Minetola would be obvious to one of ordinary skill in the art in view of the recognition that such is a material which is conventionally used to provide such wrapping.

Claim 12: as best understood, see Figure 4, adjacent 15.

Claim 13: as best understood, see Figure 5, adjacent 15.

18. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al PCT '534.

See discussion of claim 18 in paragraph 8 supra. See discussion of claim 17 supra. See page 23, lines 7-17 of Laux. As disclosed at page 39, lines 10-15 of the instant specification, the specific stretching stresses comfortably provide leakage protection. While Laux et al does not disclose the specific stress as best understood, Laux et al do disclose the same general conditions, i.e. members are stressed differently to provide comfortable leakage protection at the same elongation. Since the general conditions of the claim are disclosed by Laux, it is not

Art Unit: 3761

inventive to discover the optimum or workable ranges of such stresses by routine experimentation. See *In re Allen*, 105 USPQ 233.


***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art show various flaps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

20. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
December 14, 2003